



The Burden of Proof: Women and National Identity in ‘Islamic’ and ‘Secular’ States – The Case of Egypt

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Abstract

The call for the implementation of Shari’a law to create an ‘Islamic’ national identity can go no farther than a mere political statement in the Middle East and North Africa. The case of Egypt provides a model example of parallel examples in the region. In Egypt, Shari’a is not defined consistently, has evolved over time to include European legal codes, and the legitimate voice over the interpretation of its source texts is constantly put into question by entities vying for political power through the use of religious dogmatism. The result of these ambiguities is a weak national identity that must draw upon the only source accepted, for the time being, by society as validation that the state is ‘Islamic’. Over time, the jurisdiction of Islamic law has been limited to matters of personal status, because the exigencies of the law would prove fatal to the long-standing military-backed, authoritarian regimes in the region. As personal status laws primarily affect women’s rights – including the right to marry, divorce, work, travel, have custody over their children, and inherit – it is women who bear the burden of the weak national ‘Islamic’ state identity. The irony is that the resulting restrictions imposed by the state on women are not authentically Islamic and reflect instead the need to differentiate from the West as well as norms associated with pre-Islamic customary laws. The key to stabilizing states in the Middle East and North Africa and ending the perpetual state of Islamic revivalism in the region, therefore, is to liberate women by disentangling national identity from this false version of Islam. To

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do this, Egyptians from across the political spectrum must unify around authentic spiritual principles found in both secularism and Islam.

Introduction

In the Middle East and North Africa, there is no truly Islamic state. And by that same token, there is no truly secular state. States in the region can only exist under the *guise* of a secular or Islamic identity. The reason is that being ‘Islamic’ is only measurable by the degree to which Shari’a, or Islamic law, is put into practice, and determining what constitutes Shari’a and how to implement it in modern society has proven impossible. At the same time, secularism has never been fully enacted by any state in the Middle East owing to the government’s need to cater to the conservative elements within its population that call for the ever-elusive implementation of Shari’a law – the so-called ‘Islamic’ foundation that underlies all other laws of the land.

The first part of this article demonstrates the difficulty contemporary Muslim societies have in defining Shari’a. The case of Egypt, from which the article draws most of its primary source data, was chosen because it manifests the same challenges found in countries across the region – only in a magnetized form because of its longstanding showdown between Islamists and the military-backed, secular nationalist regime. In Egypt, Shari’a law can be defined consistently neither by everyday citizens, nor scholars, nor religious teachers, and even when defined at all, scholars point out that Shari’a is not based on authentic Islamic principles, but evolved over time to include a mix of non-Islamic traditions, including European legal codes.

To compound this barrier to implementation, the question of who has a legitimate voice to interpret the Islamic texts from which Shari’a is derived remains uncertain. Nevertheless, a response to a history of Western imperialism in the region and the need to create a unique identity that differentiates predominantly Muslim governments and societies from the West motivate Islamists to draw from the most extreme interpretations of the text and to call them ‘Shari’a’. This version of ‘Islamic’ law is far from anything practiced by Prophet Muhammad during his lifetime. Extremists, for example, choose the laws that most distinguish Islamic legal practices from the Western legal codes – laws that in the centuries following the advent of Prophet Muhammad were rarely put into practice because of their severity and oftentimes cruelty.

Most significantly, Islamists rely largely on the treatment of women to distinguish themselves as ‘Islamic’. This is an easy way for both Islamists and non-Islamists to claim they are abiding by Islamic law because it relieves the state from actually putting into practice Islamic principles in public life. Instead, it is family law, which primarily impacts women, to which ‘Shari’a’ is relegated, and women must continuously bear the ‘burden of proof’ that the state is indeed fully or partially ‘Islamic’, depending on the degree to which the notion of secularism is accepted by society. Women become the standard bearers for an Islamic identity that is not authentic. Should and when women (and men) seek to liberate

themselves from cultural norms imposed by a weak state identity, they threaten the state's legitimacy. The restrictions imposed on women by Shari'a are based, then, on a much larger agenda than religious conviction.

The second part of this article describes the fears generated from within the population and government when the more extreme version of Islamic law threatens to overtake basic freedoms beyond the rights of women. Because the government still must cater to its opposition's call for an 'Islamic' identity, the state can never fully realize its secular aspirations, and those who pay the price of proving the state is still 'Islamic' are generally women.

As this article will reveal, the only way to transcend these norms is to build unity across the Islamist-secular political divide. This unity upends the state's ability to require the subjugation of women as an identifying factor in being 'Islamic'. In seeing the unities of higher principles found in both secularism and Islam, the faith is revitalized to something beyond dogmatism and comes closer to its authentic conception. Universal human rights may be found within the faith without risking appearing too 'Western', or too 'modern'. No longer can the state wield its power at the expense of women, and only the liberation of women can end the perpetual state of Islamic revivalism in which the region finds itself.

Part One: Shari'a – The Problem of Legitimacy, Interpretation, and Implementation

When someone declares that Shari'a is a real concept based on authentic and legitimate interpretations of sacred Islamic texts, they are making a political statement – whether they realize it or not – as Shari'a has for centuries diverged from strictly 'Islamic' practices. Islamic revivalists on the move since the early 1970s in Egypt and across the Middle East have demanded Shari'a law, with the underlying assumption that Shari'a law can actually be defined, and that it has not been adequately implemented in their countries. But, as historian and author of the seminal work on Islamic civilizations Ira M. Lapidus points out, 'Discourses on sharia have evolved Different kinds of texts help constitute authority in different ways and can exist simultaneously with each other. So too can somewhat different conceptions of sharia' (Lapidus 1983:58).

In Egypt, as in other Muslim majority countries, Salafists interviewed between 2013 and 2014 who claim to return to a 'pure' form of original Islam at the time of Prophet Muhammad themselves offered that the definition of Shari'a is 'flexible'. One Salafi woman interviewee remarked: 'Shari'a can adapt to time and changes depending on circumstances. . . . I cannot tell you scientifically what the definition is because I've never studied it in that way' (interview by author, Heliopolis, Egypt, October 2013).¹ This flexible definition depending on textual interpretations makes Shari'a easy to dispute and therefore difficult to implement. An Egyptian Salafi politician in the Nour Party stated: 'Of course it is a long story. Shari'a is a set of rules embedded in the Quran and Sunnah that guarantee a better life for people' (interview by author, Alexandria, Egypt, February 2014). Another Salafi businessman in the tech industry remarked: 'There is no one clear universal

interpretation of Shari'a law – and that is an issue that scholars have not resolved for the past one hundred years' (interview by author, Cairo, Egypt, November 2013).

The question of what religious institution or entity has the legitimate voice over what constitutes the correct interpretation of Shari'a law also comes into play. In Egypt and other countries in the region, scholars differ as to who should be able to advise the government on what constitutes Shari'a law. Al Azhar is included in the Egyptian constitution as the arbiter of Shari'a law. But Salafis and members of the Muslim Brotherhood disagree as to Al Azhar's role and place in the interpretation of Islamic law for the state. They see the institution as a tool of the Egyptian state, as the president of Al Azhar is appointed by the president of Egypt. A Salafi scholar and imam noted, 'There is always a misinterpretation of what Shari'a is among academics – they short cut it into criminal laws, but Shari'a is a whole way of life – it's the faith, worship, ideal, and ethics of Islam. It is not owned by Al Azhar, the Salafis, or the Muslim Brotherhood.' A professor of law at the University of Alexandria stated that 'Al Azhar is irrelevant in the interpretation process – Al Azhar is nothing – nothing at all. It's just where the jurists are educated. Anyone can have his own understanding or interpretation of the law, so it's very complicated. Officially, it is the role of the Supreme Constitutional Court' (interview by author, Alexandria, Egypt, February 2014).

'Shari'a': Not Islamic, but a 'Mix of Legal Codes'

But here there is yet another complication, and this time more deeply rooted in the actual development of Shari'a law. Even with a final arbiter in the Supreme Constitutional Court of Egypt, this arbiter must reconcile the fact that in Egypt, as in other countries in the region, Shari'a law is not 'Islamic', per se – it is, in fact, a mix of European legal codes and Islamic law as it evolved to suit the rulers of the times over the centuries since the passing of Prophet Muhammad and the Rashidun caliphates. Sami Zubaida (2003) points out that during the process by which the legal codes evolved depending on religious scholars' interpretations, their judgments were influenced heavily by the rulers. 'In the process of this elaboration', he writes, 'the scholars did not remain separate from the rulers and their institutions. Processes of political struggles and quests for legitimacy articulated the scholars' art into the institutions of the rulers and transformed both' (ibid.:4).

In addition to rulers imposing their whims on Islamic legal codes, an Egyptian Salafi Sheikh and Nour Party leader emphasized the mixing of European legal codes into Islamic law. 'Sharia before and after the British invasion, and after the first constitution in 1921', he said, 'began to regress. The first constitution drew from French law. Some of the articles in the constitution conflict with Shari'a. For more than one hundred years, Shari'a has been absent' (interview by author, Alexandria, Egypt, February 2014). This is why, claims Zubaida, 'Given that much of Egypt's civil and penal code were adoptions and adaptations of European positive law, a contradiction (or *izdiwajiyya*, duality, to put it in terms of Egyptian lawyers) was created, which has become a rich source of contests and debates, and attempts at constructive syntheses' (Zubaida 2003:166). The law

professor at the University of Alexandria also pointed out Abdel Razaq al Sanuri's work on Egypt's civil law, in which al Sanuri 'made compromises between the legal systems of the whole world and the basic principles of Shari'a – he brought all of them together in one code' (interview by author, Alexandria, February 2014).

Scholars and writers such as Fatima Mernissi (1987:44) note that family law as practiced under Shari'a is no different from family law and its restrictions on women in pre-Islamic Europe (Zubaida 2003:135).² This supports the theory that family law itself is influenced more by patriarchal norms and traditions than anything authentic to 'Islam'. Family Law, which governs the lives of women – from whether they can marry, divorce, have custody over their children, work, or travel – became, by definition, 'Shari'a'. What was considered and relegated as 'Islamic' was restricted to personal status laws – that is, Shari'a became almost entirely a matter of family law, and in that, it became almost entirely a matter with which women had to contend.³ Not only do women now have to accept legal precepts that are stricter than they normally would be during the lifetime of the Prophet, they have to abide by precepts based on pre-Islamic cultural norms and standards, and all in the name of 'Islam'.⁴

The Impossibility of Implementation

Because there is no single concept of Shari'a, it is not possible to be taken seriously when calling for its implementation. And yet the perceived absence of Shari'a law is the central point of contention between Islamists and secular nationalists in the region. What would it mean, then, to implement Shari'a with these ambiguous definitions that are constantly evolving? The Egyptian Salafi Nour Party politician noted that 'Shari'a cannot be applied correctly, even in Saudi Arabia'. 'We cannot impose anything on people – even by parliament – we should be able to decide. Any law issued by legislature should not violate *ijma*, or consensus' (interview by author, Alexandria, Egypt, February 2014). An Egyptian female school teacher remarked: 'It is really complicated to apply Shari'a after three hundred years of totally restricting it. Shari'a was implemented until the time of Muhammad Ali Pasha. After that there has been an intellectual and cultural war on Islamic values and rituals led by some secular movements influenced by Western values' (interview by author, Cairo, Egypt, December 2013). Her husband added, 'Some Islamists would like to limit Shari'a to only a couple punishments – against usury, fornication, drugs, and alcohol, but Shari'a includes general principles – justice, freedom, democracy, fighting corruption, subsidies for the unemployed and women' (interview by author, Cairo, Egypt, December 2013).

Another Egyptian Salafi Sheikh and businessman commented on why the government and even the private sector is averse to applying common interpretations of Shari'a. 'We have sharia in the social life of the people', he said. 'If a man divorces his wife, the court will apply the sharia. But if I have an arbitration with my partners here, it will not be solved according to sharia but to the law. Not good – because sharia is more merciful, much more just' (interview by author, Heliopolis, Egypt, November 2013).

‘Calling for Islamic law’, then, said the University of Alexandria law professor, ‘is only a slogan⁵ to please the mobs’ (interview by author, Alexandria, Egypt, February 2014). ‘Shari’a is a collection’ (ibid.). Zubaida (2003:170) writes:

The *shari’a*, then, is now primarily a political issue, and its discourses that of political contest. We saw, however, that while the slogan of applying the *shari’a* elicits a public near consensus, politicians and legal professionals, fearing disruption, conflict and political fall-out, always fudge the issue when it comes to actually legislating the *shari’a*.

In addition, in Egypt especially, the legal education system makes it difficult for anyone to even be able to apply Shari’a law as it stands. The law professor remarked his classes were ‘as large as stadiums’, and that it would be impossible to teach the fifty thousand students enrolled in the law school (interview by author, Alexandria, Egypt, February 2014).

Interestingly, in Egypt, Iran, Iraq, and other countries in the region, fewer students are actually electing to become ‘experts in Islamic law’. ‘It is notable’, writes Zubaida (2003:162), ‘that the cadres of the Islamic political movements, whose main advocacy is the application of the *shari’a*, are drawn primarily from students and graduates in the natural and technical sciences, with few from religious studies’.

Another barrier for the realization of the ‘Islamic’ state is that Shari’a in its current interpretation cannot be applied without significantly altering legal codes that have been applied for decades and that are taught as part of standard law in Muslim majority states. In Egypt, for example, lawyers would lose credibility and be considered outmoded should they suddenly revert to traditional codes in the name of Shari’a.⁶ In addition, the application of Shari’a with regard to bank transactions and interest payments would cause an uproar and lead to financial challenges for both the banks and the state.⁷ Other women from the conservative Islamist Nour Party Headquarters in Alexandria offered that ‘Shari’a is not suitable for this time’ (interview by author, Alexandria, Egypt, February 2014).

The Price Women Pay

The problem that arises from a lack of legal education and confusion about the degree to which Shari’a is actually ‘Islamic’, and therefore the degree to which the state can call itself ‘Islamic’, is that the state’s national identity becomes fragile. Any attempt to loosen the flimsy structure on which the state’s legitimacy is built is met with rigid opposition naturally because it threatens the state itself. This explains why it is so difficult for women to transform legal barriers and restrictions on their rights in predominantly Muslim countries.

As the ‘Islamic’ state identity depends on appearing different from the Western legal and value system, the laws it chooses to put into practice become the exaggerated version of what Islam ever truly was during the lifetime of the Prophet. In order to differentiate from the West, Islamists went to extremes, since Shari’a evolved and changed according to Western law.⁸ A law professor in the Women’s

College at Al Azhar stressed that ‘the niqab [full black covering of women from head to toe with the exception of a slit for the eyes required by many conservative Islamist groups in the region] is not even from Islam – it comes from the Jewish tradition’. She added that ‘the government sacrificed women’s rights to quell the Islamist constituents who demanded an “Islamic” national identity’ (interview by author, Cairo, Egypt, January 2014).

Many conservative Islamist groups in Egypt also emphasize the *hadd* laws that enforce punishments such as cutting off the hands of thieves are practiced more in this century than during the time of the Prophet. ‘There are very tough condition for applying this law’, said the Salafi Sheikh and businessman, ‘and do you know how many times these conditions were met during the Prophet’s life? Zero’ (interview by author, Heliopolis, Egypt, November 2013). At the same time, where some interpretations of the texts are more liberating for women, the state does not apply these laws. For example, an Egyptian Salafi woman noted that ‘if Shari’a were really applied in Egypt, women would already have the right to divorce their husbands if they can provide evidence they are being abused’ (interview by author, Cairo, Egypt, January 2014).

Because the state is in the position of only appearing to abide by Islam, they must at the same time ensure that this false guise does not actually take over control of the true structure of the state, which is often, and especially in the case of Egypt, based on military might.⁹ ‘The power of the modern nation-state to intrude into and regulate all aspects of the life of its citizens means that religion occupies an uneasy place in *any* modern state’ (Zaman 2002:101). This is where the concept of secularism may be used by the leader of a modern state in the Middle East and North Africa. But because the foundations of power are not based on democratic structures and healthy, diverse party systems, citizens continue to galvanize support to oppose the state through the use of religion. Governments, in response, attempt to integrate that which can never be implemented – Shari’a law; thus, attempts at secularism are also failures and based on the false premise that religion and state are actually separated.

Part Two: The Guise of the ‘Secular’ State

If the definition of an Islamic state is one in which Shari’a law is implemented,¹⁰ the information presented above should put into question whether there can be a truly ‘Islamic’ state. By the same token, states with Muslim majority populations that do not claim explicitly to be ‘Islamic’ cannot also without significant difficulty claim to be ‘secular’. To take the case of Egypt, neither the political elites who often oppose the development of Islamist groups nor the Islamist groups are willing to give up reliance on religion as the basis on which they build their legitimacy and legal systems.¹¹ In cases in which the elites do call themselves ‘secularists’, they still do not oppose the state’s and religious authority’s (which are intrinsically tied to one another) intervention in family laws on the so-called basis of ‘religious’ prescriptions. The state becomes a ‘good model’ of a secular state that is also Islamic. But this act is performed entirely at the expense of

women, who are impacted the most by family law. In Egypt, the private sphere is unequally affected by stricter notions of Islam than the public sphere.¹²

Beyond Secularism: The Spiritual Basis of National Identity

In Egypt, secular liberals end up going to extremes to prevent the actual implementation of whatever version of Shari'a law would be put into practice should Islamic law be practiced in public life. The Muslim Brotherhood's year of power under President Morsy was threatening not because major changes would necessarily be prescribed in writing to the constitution, but because what was already written into the constitution could actually be enforced. Fears of Article Two, which makes Islam the basis on which all other laws achieve their legitimacy, made it difficult for the Muslim Brotherhood to make any other amendments or new laws without an overreaction from their political opposition.¹³ On the other hand, the seculars pretend to allow Islam to make Shari'a the supreme law of the land. As in Egypt where the Supreme Constitutional Court, not Al Azhar, is the final arbiter of Shari'a, this happens elsewhere in Muslim majority countries including Pakistan, where the population seems to simply ignore the fact that the most important areas of the law are removed from the jurisdiction of the Shari'a Court.¹⁴

Still, the secularist agenda never quite reaches its professed goal. Secularism in the Middle East and North Africa region is not secular. This is because the notion of living by authentic spiritual principles is universally appealing, and why would it not be? In reality, there is no state that does not seek to abide by 'higher' principles of life. Each was founded on principles that come either from a religious tradition or canon or are held sacred by the populace. This is the basis of the written manifestation of nationalism. When segments of the population believe the government is failing to abide by such higher principles, it rebels. The result is a perpetual state of internal conflict between elites who believe religious principles should influence governance and law and those who believe religion has nothing to do with governance, and the marginalized non-elite who in general call upon higher principles associated with religion to assert their rights. 'We are suffering from a dispute between the elites – we have two main groups of elites', said a political science professor at the University of Cairo. 'In the USA, Great Britain, France, the elites believe that the state should be secular. Here, the situation is different. Some of us believe the state should be a religious state – not a religious state, but an Islamic state. There is a big difference. They are using this term "religious state" incorrectly', he asserted (interview by author, Cairo, Egypt, January 2013).

The United States, Germany, and other Western countries, when closely studied, however, reveal similar traits – they are founded on the Judeo-Christian tradition's principles, and the printed money and other national documents reflect deeply spiritual roots.¹⁵ Egypt's case is all too clear, as Lapidus astutely remarks: 'Egypt is governed by a secularized political elite which dominates the ulama without being able, as is the Turkish elite, to commit the state to a secularist

policy. The result is permanent Islamic revival' (Lapidus 2002:28). The attempts made by secularists to create a truly secular state are thus merely aspirational.¹⁶ Because the state uses Islam to legitimize power, opposition has to take the form of Islamism. This means that if the state embraces women's rights, opposition to the state will use religion to deny women's rights. It is no surprise that in 2013, Egypt was ranked by the Thomas Reuters Foundation as the 'worst Arab states for women.'¹⁷

What becomes of mixed historical foundations and use of religion for political purposes is a state in which there is no outlet for women – whether through secular or religious channels – to make their claim for universal human rights? Secularists continue to allow Islamist regulations to control the private sphere in order to quell Islamist constituents, and Islamists continue to believe Shari'a is meant to apply mainly to the private sphere. Even when President Morsy was no longer in power, the so-called 'secular' government did not take the necessary steps to empower women. As in the case of the Islamists, women's empowerment, if it came at all, was at the superficial level and had little effect on women's participation in political leadership and parliament,¹⁸ even when amendments to the constitution seemed to imply otherwise.¹⁹

Prospects for Change

How, then, can women realize their rights in states that depend on restricting women's rights as a sign that they are 'Islamic' while also attempting to be 'secular'? The answer lies in the willingness of those who hold power and legitimacy over religion to choose to not employ women's bodies as a means by which they represent the state's identity. As family law restricts women's physical movement, including her right to work outside the house, travel, and wear the clothing of her choice, and restricts her rights to child custody, inheritance, marriage, and divorce, both the state and religious leaders must consider other ways of legitimizing their power.²⁰

In some ways, this is already occurring owing to pressure from the populace, especially from women and youth. Religious institutions guard what power they have in their relationship with the state, but their power is being loosened slowly as women's organizations are educating women, encouraging a re-reading of the source texts for Islamic law, and giving women opportunities to discuss religious practices openly. A new state of consciousness is awakening the populace, and more identify the differences between traditions based on pre-Islamic, patriarchal practices and those that achieve progress by encouraging actions based on true spirituality.

While opposing clerics cling to patriarchy in order to preserve their own power in the name of religion, youth in majority Muslim countries see through their game. They understand that the '*ulama* at times supports the government against the Islamists who call for stricter 'enforcement of Shari'a' and at times support Islamist movements according to the power and benefits they gain from being on their side (Zubaida 2003:179). As each political group utilizes Islamic vocabulary

to achieve their goals, Muslim scholars, bloggers, and youth activists speak out about the psycho-social manipulation of religion to attain political goals.

Unifying Society to Transcend National Identity

Women and youth, too, have been the impetus behind the recent uprisings against dictatorship, authoritarianism, and military rule in the Middle East. Their evolution of consciousness in the region puts corruption on the defence. Writers question why military-backed ‘secular’ governments focus on terrorism while Islamist governments focus on women’s bodies. The popular Egyptian writer Alaa Al Aswany (2009) comments that these are merely distractions away from the true problems of the state: ‘Being strict about covering up women’s bodies,’ he writes, ‘is an easy and effortless form of religious struggle.’ Instead of fighting for human rights and justice, Islamists choose to capture the small gain that they can in the form of restrictions on women’s rights. Unfortunately, this small gain comes at women’s enormous sacrifice – whether willingly or unwillingly – to enable male empowerment in the Muslim majority state. Al Aswany (2009:2) continues:

In Egypt, we see dozens of Wahhabi sheiks who enthusiastically advocate covering up women’s bodies, but do not utter a single word against despotism, corruption, fraud or torture because they know very well that serious opposition to the despotic regime (which should really be their first duty) would inevitably lead to their arrest, torture and the destruction of their lives. Their strictness on things related to women’s bodies enables them to operate as evangelists without any real costs.

As women become more active through education they are more likely to care about needed reforms without being partisan to particular parties or organizations. This is true of conservative Islamist women who still advocate for ‘democracy’ and refuse to espouse polarizing political views even from within the Nour Party and other Islamist groups, for example, in Egypt. An overwhelming percentage of Egyptian women do not identify with any political party. The secret to women being able to overcome restrictions to their freedom imposed by the state’s need to identify as ‘Islamic’ and/or ‘secular’ depending on the political tides is for social structures based on class identity to break, and for Islamists and secularists to realize what unites instead of what divides them. What unites them is their desire to live according to universal principles of human rights found in both secular and spiritual ideals.

The challenge is that elite women who are financially independent are not as affected by restrictive family laws, and therefore they are less likely to pursue reforms, while poor and uneducated women risk social abandonment and even their lives for protesting family laws.

But as class barriers are broken in Egypt, wealthy elites can mobilize with the vast numbers of non-elite women who aspire for more rights and yet wish to hold onto their Islamic national identity. As women unify, they can create a new national identity for the state that is not dependent on restrictions to women’s rights. The state can still remain true to higher principles integrated

within religious values, but these values will be determined by women's [and men's] interpretations of the Islamic texts and universal human rights. This is already happening at the level of civil society in Egypt, especially among its vibrant community of women's organizations. Representing the Women and Constitution Group, Nazra for Feminist Studies lobbied to two members of the committee of fifty on 23 September 2013 for the following reforms during the 2014 constitutional drafting process:

- An article in the constitution underscoring the importance of the state's commitment to international convention, especially those UN Resolutions and Acts that counter violence against women.
- A quota system of at least 30% women in parliament through proportional lists in the election process. The organizations propose there should be at least one woman among the first three candidates, and that the second candidate on the list necessarily be a woman.
- The abolishment of an article (in addition to Article 2) proposed by the ten-member committee making women's equality necessarily compliant with Islamic Shari'a.
- The amendment of an article concerning child rights to include children up to eighteen years old. (Because this is standard Egyptian law, the women's organization wanted to ensure it was also in the constitution. It is also easier to criminalize marriage under eighteen years old and child workers under eighteen) (interview by author, Cairo, Egypt, January 2014).

Women's organizations are less interested in contributing to the polarization of society between Islamists and secularists but rather in actual reforms that will grant more rights and freedoms to all Egyptian citizens. This reflects the sentiments of the majority of Muslims in the world who, according to the Pew Research Center (2012), want to see both democracy and the higher principles of Islam in public life. 'The state has to change economic factors', said Nevine Ebeid from the New Woman Foundation, 'and fight the source of grievance – the mainstream will be 'citizenship' not 'because I am Muslim' (interview by author, Cairo, Egypt, October, 2013). Egyptian women's organizations took these ideas on a nationwide campaign to educate and garner support for the constitutional amendments in the countryside and major cities.

But for women's organizations to be able to serve as class unifiers around issues of universal importance to Egyptians of all political stripes, especially women, they need a strong communications strategy and messaging. This can be significantly enhanced with proper media coverage. Currently in Egypt, 'the media does not take the women's movement seriously', said a representative from Nazra for Feminist Studies.

It's never about opening the discussion – they just say what women's organizations did. Oh wow, Egyptian women were in the street during the revolution. As if we don't exist! They pick heroes. They were focused on the virginity tests and the sexual violence. Sexual violence has always been

going on – just not in Tahrir. Western media blamed the Muslim Brotherhood. We don't know who is doing it – we just know it's organized. (interview by author, Cairo, Egypt, October 2013).

Conclusion

Why is the ulama' so guarded about its apparent expertise while the Shari'a law it proclaims to promote is both impossible to define and implement, par excellence? The evidence is out – they, too, must ward off the encroachments of a state that depends on an 'Islamic' identity in order to maintain power and legitimacy. It is a vicious cycle. The state must appear to practice Shari'a, and yet religion must also appear separate from the state as Muslim majority countries try to become 'secular'. In doing so, they attempt to satisfy their conservative constituents through the inclusion of Shari'a in their constitutions. The guise of both Islamism and secularism illustrates the weakness of the state's national identity, and the burden of proof falls on women shoulders. The restrictive family laws imposed on women as a result have more to do with pre-Islamic patriarchal practices than standards for women encouraged by the Prophet Muhammad.

Only social unifiers can disrupt the state's attempt to build its national identity and hence legitimacy at the expense of women. This means that women's organizations must be supported and encouraged to galvanize support for universal rights throughout Muslim majority countries as a matter of national security. Otherwise, the struggle between Islamist groups and the so-called secular, military-backed regimes will go on, and governments in the region will continue to benefit from this struggle as a distraction from the corruption, distrust, and poor accountability hidden under the black niqab along with women's bodies.

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Notes

¹ Note bene: Egyptian interviewee names are kept confidential in case of potential compromise.

² 'These reforms, and others which were to follow, could only satisfy a secular modernist nationalism by pretence to national or Islamic authenticity as against foreign legal systems.'

In reality they represent a triumph of European models. That is to say, the parts of the *shari'a* on civil transactions, once codified in European forms, shows no intrinsic or fundamental differences from its European equivalents' (Zubaida 2003:135).

³ 'Court procedures and rules of evidence were also brought into line with European models: the employment of lawyers and systematic advocacy, for instance, were unknown in *qadi* courts (Botiveau 1993a:160–65). Legal education for *shari'a* lawyers was gradually brought into line with European models. In Egypt the Azhar was bypassed with the establishment of *shari'a* faculties at the modern universities; such as Cairo and Damascus; then, from 1961, the Azhar itself was reformed as a modern university (Botiveau 1993a:48–74). The survival of elements of *fiqh* and *shari'a* in modern legal systems, then, was at the cost of transforming these elements into positive state law, and of its practice into modern (European-style) court and juridical systems' (Zubaida 2003:134–35).

⁴ '[T]he Shari'a courts were gradually reorganized to reflect the procedural precepts of a liberal rule of law, and their jurisdiction was increasingly restricted, making space for the national courts. The two existed side by side until 1955, when the Shari'a courts were absorbed into the national court system, creating a single, unified court structure. What had once been the Shari'a courts thereafter became known as the Personal Status division of the national court system, and while the substance of Personal Status was still based in the Islamic Shari'a, its procedures came to be governed by the general law of civil procedure' (Agrama 2010:511–12).

⁵ 'Indeed, there is much in common between different legal traditions because of the similarity of human problems. As such, modern Egyptian legislation is not at variance with the *shari'a*, but, as we have seen, many of the principles of civil law are common to both traditions. The call for the application of the *shari'a*, then, is no more than an ideological slogan, drawing unnecessary boundaries to emphasize Islamic distinctiveness from the West, and in the process attempting to introduce archaic formulations and practices (Shepard 1996:46–47)' (Zubaida 2003:179).

⁶ 'In Egypt, where there is a great clamour for the application of the *shari'a*, few of its advocates would wish to reverse codification and modern procedures. Given that many of its advocates are lawyers and bureaucrats, reversion to traditional forms would undercut their training, competence and employment opportunities' (Zubaiba 2003:221).

⁷ 'However, while the brotherhood and its allies want to take immediate steps in this process, the government and the NDP stall, with procedures and committees. Clearly, a wholesale application of the *shari'a* would bring about disruptions and embarrassments. In particular, the application of penal *hudud* and the interdiction of bank transactions specifying interest payments would lead to strong opposition and disruption, not least in sensitive Western quarters. As such, the government is seen by all the Islamic groups as an obstacle to the application of the *shari'a*' (Zubaida 2003:167).

⁸ 'It is precisely because the codified *shari'a* in its mundane application to civil matters resembles other profane codes that those who seek the *shari'a* as an identity and difference marker vis-à-vis the West emphasize those elements in it which are distinct and often disapproved in liberal contexts: the penal provisions, the patriarchal norms, the ban on alcohol, and the interdiction of dealing in interest. These aspects, at the same time, bring a semblance of public law to what otherwise would be a *shari'a* confined to its common historical limits to private law and civil transactions, which detracts from its centrality to a proposed Islamic state' (Zubaida 2003:179).

⁹ The ambivalence does not lie in the idea that leading jurists and religious scholars should guide the Islamic state—that, after all, is the essence of their conviction, as we have seen; it consists, rather, in the fear that in the guise of upholding Islam the state might make it subservient to its own goals and ultimately absorb it within itself' (Zaman 2002:107).

¹⁰ An Islamic state is not one in which Muslims are simply a numerical majority, as they are in Pakistan, but one in which the law of God is implemented. The question of *whether* this law, the shari'a, ought to be implemented can hardly arise, for a Muslim, by definition, cannot want it any other way; nor can a state be Islamic except in this way. What merits consideration, then is not whether but *how* to implement the shari'a. This way of formulating the question is not a small measure of the extent to which the ulama have been able to hold the modernists accountable for the ambiguities of their own rhetoric' (Zaman 2002:94).

¹¹ 'On the one side are the political elites and social managers, pointing to the exigencies and sensibilities of a modern society and economy, where the old legal provisions lead to considerable hardship and dysfunction; on the other are the social conservatives appealing to religion to arrest or reverse any measures of social liberalization. What is interesting, however, is that both sides appeal to religious sources and authorities: there seem to be no secularists' (Zubaida 2003:173).

¹² 'Egypt therefore only brings into bold relief a contradictory setup that is characteristic of the paradigmatic secular states more generally: on one hand, "religion" as defined by the state is placed in a private space, separated off from the state. On the other, family is also placed in this private space, but the state continually sees the need to regulate and authorize it, as part of its sovereign power to maintain and regulate the public order. The historical relationship between family and state sovereignty thus becomes a source of continual entanglements between religion and politics' (Agrama 2010:519).

¹³ 'One reason some of those opposed to the amendments were willing to accept extended army rule was their fear that article 2 of the present constitution, which makes Islam the primary source of law, would be retained unchallenged or possibly even be expanded in scope within a new constitution. This fear was voiced even though the amendments themselves had nothing to do with article 2 or the question of religion in general. Nevertheless, the fear seemed to be confirmed by the Muslim Brotherhood's extremely vocal support for the amendments' (Agrama 2012a:229).

¹⁴ 'Questions about the repugnancy of particular laws to the shari'a were to be referred by the courts to the Federal Shari'at Court. Yet these measures served, perhaps more than anything else, to highlight where the real locus of authority lay—even in determining the contours and scope of the Islamization project—and to underscore the ambiguities and constraints of the public rhetoric on Islam. Most strikingly, perhaps, the very ordinance that professed to make the shari'a the "supreme law of Pakistan" also expressly removed large and important areas of the law from the jurisdiction of the Shari'at Court' (Zaman 2002:89).

¹⁵ 'The question of whether Egypt is a secular or a religious state is but one manifestation of this power; that it has been continually asked both in and outside of Egypt is just one indication that the country is fully subsumed within the problem-space of secularism, as are Israel, the United States, England, France, Germany, and many other states that continue to exhibit secular-religious ambiguities and that stake fundamental freedoms on their clarification. And this will remain the case until the question of where to draw a line between religion and politics is no longer deemed necessary to ask in relation to the range and distribution of fundamental rights and liberties' (Agrama 2012b:28).

¹⁶ 'My argument is that the recently resurgent political Islam is directed precisely against the secularization and the secularizing reforms that have occurred extensively in the region for two centuries, and which are irreversible. In Egypt, Turkey, Iran and most other countries, we see this secularization in government and its institutions, in the law, in education, in the economy and, most important for our argument, in the cultural fields' (Zubaida 2003:5).

¹⁷ 'Egypt is the worst country for women in the Arab world, closely followed by Iraq, Saudi Arabia, Syria and Yemen, according to gender experts surveyed in a Thomson

Reuters Foundation poll released on Tuesday. Sexual harassment, high rates of female genital mutilation, a surge in violence and the growth of Islamism after the January 2011 uprising have made Egypt the worst country in the Arab world to be a woman, a poll of gender experts showed. Discriminatory laws and a spike in trafficking of women also contributed to Egypt finishing bottom of twenty-two Arab states, the Thomson Reuters Foundation survey found. Despite hopes that women would be one of the prime beneficiaries of the Arab Spring, they have instead been some of the biggest losers, as the revolts have brought conflict, instability, displacement and a rise in Islamist groups in many parts of the region, experts said' (*Egypt Independent* 2013).

¹⁸ 'The National Council for Women released a statement on Thursday calling for no less than 100 seats allocated to women in the next parliament. The statement said that this is in line with Article 11 of the newly-approved constitution that calls for women's equality in society. The constitution, however, does not guarantee any parliamentary quotas for any groups. NCW head Mervat Tallawy stressed the need for women's representation in parliament, commensurate with their weight in society, pointing to the need for women to do their part in society and to change the stereotypes of the function of women in society' (*Ahram Online* 2013).

¹⁹ For a summary of women's challenges to participation in the 2015 parliamentary elections, see the 2016 UN Women's Report Network, available at: <http://wunrn.com/2016/02/egypt-women-in-2015-parliamentary-elections-overview-analysis/>.

²⁰ 'It is in the context of this ambivalence towards the state, towards even—and perhaps especially—an Islamizing state, that we can make sense of the 'ulama's view of themselves as religious "experts," comparable to experts in any other area of life. This view expresses their efforts not only to define their role in a modern society and state and to shape both according to their prescriptions, but also to ward off the encroachments of the state on what they see as *their* own distinct sphere, *their* area of competence' (Zaman 2002:101–02).

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